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HEARING

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In the Matter of:

Adjustment of the Rates for
Noncommercial Educational
Broadcasting Compulsory
License

Docket No. 96-6
CARP NCBRA

Library of Congress
James Madison Building
101 Independence Avenue, S.E.
Room LM414
Washington, D.C. 20540

Tuesday,
March 17, 1998

The above-entitled matter came on for
hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE LEWIS HALL GRIFFITH, Chairperson
THE HONORABLE EDWARD DREYFUS
THE HONORABLE JEFFREY S. GULIN

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ORIGINAL

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1 P-R-O-C-E-E-D-I-N-G-S

2 CHAIRPERSON GRIFFITH: Let the record
3 reflect, please, that we are now in executive session.

4 MR. KLEINBERG: With the Panel's okay, I
5 think Dr. Owen would use the board here to go through
6 his analysis.

7 CHAIRPERSON GRIFFITH: Please. Thank you.

8 MR. KLEINBERG: I just want to put a
9 summary table up. I think it's a little easier than
10 trying to talk about these numbers.

11 THE WITNESS: This is television. I'm
12 going to do a separate -- separate chart for radio.
13 And here I'm going to put the comparison factor being
14 compared, and over here the results, the public as a
15 percent, commercial. Is that legible?

16 MR. KLEINBERG: Yes.

17 THE WITNESS: The first comparison is
18 music use. That's the most complicated comparison.
19 Public television, according to BMI's calculations,
20 has more music than commercial television for total
21 music. On the other hand, the fraction of it that is
22 BMI music is lower than in commercial television.

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1 And I go through a series of calculations
2 that are in the testimony, the bottom line of which is
3 that about 13 to 17 percent of the program time on
4 commercial television is BMI music, whereas about
5 14-1/2 percent -- 14.6 to be exact -- of the music --
6 of the program time on commercial television is BMI
7 music. Ad from that I conclude that they are
8 approximately the same. In other words, the
9 measurement -- I can't distinguish between those two
10 -- those two outcomes.

11 So just as a -- 13 to 17 percent public,
12 and 14.6 percent commercial, and that is percentage of
13 program time program expense which, of course, I think
14 is the -- probably the best of these factors, most
15 reliable.

16 BY MR. KLEINBERG:

17 Q Doctor, you are going to have to keep your
18 voice up.

19 A I'm sorry.

20 Q It is dropping at the end, and we need
21 everybody to hear it.

22 A Program expense is, I think, the most

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1 important or reliable of these -- of these factors.
2 Public broadcasting program expenditure in the
3 1994/'95 period was \$674 million.

4 Commercial broadcasting program
5 expenditure in the same period was \$10.1 billion. And
6 the result is that public broadcasting program
7 expenditure is about 6.7 percent of commercial
8 broadcasting program expenditure.

9 Q Dr. Owen, may I ask you, you indicated you
10 thought the programming expenditure factor was perhaps
11 the most relevant or useful here. Could you explain
12 why?

13 MR. RICH: I would object to the question.
14 I don't believe that statement is supported in his
15 written direct testimony.

16 CHAIRPERSON GRIFFITH: He just made the
17 statement that --

18 JUDGE GULIN: I'll tell you, Mr. Rich, it
19 may be slightly outside but it is a matter I'm going
20 to get into anyway. So I want to hear it.

21 CHAIRPERSON GRIFFITH: He made the
22 statement.

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1 THE WITNESS: Program expenditure is the
2 best of these or the most important of these factors,
3 because the argument for the factor shares, the
4 components of program expenditure, being the same
5 between these two very similar media is the strongest.
6 When we go, for example, to revenues, we begin to
7 bring in other functions that don't have anything to
8 do with programming, like support of bricks and water,
9 for example.

10 When I said that, I suppose I was
11 subsuming that I had already taken into account music
12 in this, which is arguably also very important. But
13 since that is about the same here, it doesn't fall out
14 as a big factor.

15 BY MR. KLEINBERG:

16 Q You can continue, Dr. Owen.

17 A Revenues -- public broadcasting revenues
18 in 1994/'95 were \$1.3- to \$1.4 billion, and commercial
19 broadcasting revenues were \$29- to \$32 billion. The
20 result is 4.6, 4.8 percent. That is, public
21 broadcasting's revenues are about 4.8 to -- 4.6 to 4.8
22 percent of commercial broadcast revenues.

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1 And finally, audience -- public
2 broadcasting's share of households, as measured by the
3 rating services, has been in this period running
4 around three to four percent, compared to commercial
5 over-the-air broadcasting's 67 to 73 percent. And the
6 result of that is that just taking the ratio of those
7 two numbers, public broadcasting has 4.4 to 4.5
8 percent of over-the-air commercial broadcasting's
9 audience.

10 Q I think you said 4.4 to 4.5.

11 A I'm sorry. 5.5.

12 The bottom line in all of these factors is
13 just to look at the whole range, because all of these
14 numbers are emphasized and they are estimates.

15 So the conclusion I came to is that the
16 numbers on the chart suggest a range of outcomes of
17 between four and seven percent, and that's just
18 rounding --

19 MR. SCHAEFFER: I'm sorry. Ranges?

20 THE WITNESS: Four to seven percent, or
21 \$4- to \$7 million, given that BMI's payments in 1996
22 were \$106 million.

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1 BY MR. KLEINBERG:

2 Q Would you turn to your analysis with
3 respect to radio?

4 A The radio analysis differs from the
5 television analysis in two respects. One is that the
6 music use data are very different, and the other is
7 that the amount of data that we have is very
8 different. There is much less data for radio than for
9 television.

10 In particular, for program expense there
11 are no data. At least we didn't have any data at the
12 time that the report was submitted. So program
13 expense not available.

14 Revenues -- the 1994/'95 public
15 broadcasting radio was \$411- to \$457 million, and
16 commercial radio was estimated to be \$10- to
17 \$11.1 billion. And that ratio is 4.1 to 4.2 percent.
18 That is, public radio is 4.1 to 4.2 percent of
19 commercial radio, in terms of -- according to these
20 estimates.

21 The audience comparison is based on
22 measurements or estimates of listener hours for both

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1 commercial and public radio. There were estimated to
2 be 160 million listener hours per week for public
3 radio and 4.71 billion listener hours per week for
4 commercial radio. That ratio works out to 3.4
5 percent.

6 Those are the two measures. When it comes
7 to music use, there simply aren't -- aren't good data,
8 and we had to come at the music use question by
9 looking at program categories. Public broadcasting
10 has a lot of classical music and it has a lot of non-
11 music programming -- talk programming, for example.
12 In fact, that adds up to about two-thirds of all of
13 the programming on public radio.

14 Classical music is very often in the
15 public domain, although some of it is BMI music. And
16 talk programs, and so on, have at least much less,
17 some have none -- no music.

18 So what we did was to assume that none of
19 the music in that part of the public broadcasting
20 radio schedule had any BMI music. That accounts for
21 two-thirds of all of the programming on public radio,
22 and so we simply set that aside and said no BMI music

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1 at all.

2 For the remaining one-third, we assumed
3 that the amount of BMI music provided was the same as
4 on commercial radio. And what that -- what that --
5 that was really kind of an extreme conservative
6 assumption. We assume, as I said, that public radio
7 outside of that one-third of the time has no BMI music
8 -- classical or talk segments. And, further, it
9 assumes that commercial radio doesn't have any
10 classical music or any talk. That clearly is not --
11 it is not true. So it is an underestimate.

12 Well, anyway, the bottom line is we assume
13 that BMI music in public radio is one-third of what it
14 is in commercial radio.

15 MR. KLEINBERG: Just one point. I am not
16 -- somebody has entered the room while we are still in
17 this executive session. I'm not sure I know who it
18 is.

19 MR. STEIN: She is covered by the
20 protective order.

21 MR. KLEINBERG: Okay. Thank you.

22 Sorry, Dr. Owen.

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1 THE WITNESS: Okay. So the bottom line
2 here is that the royalty should be three to four
3 percent. Public radio royalty should be three to four
4 percent of the commercial radio royalty, based on
5 these -- based on this range of numbers here. But
6 then that should be discounted by two-thirds.

7 It was only one-third of this amount
8 should be -- should be included, and that produces a
9 one -- a two percent royalty, which on the basis of
10 the BMI commercial radio revenue for 1996 of \$115
11 million comes out to \$1- to \$2 million in round
12 numbers.

13 BY MR. KLEINBERG:

14 Q And, Dr. Owen, just to wrap up, the
15 conclusions that you reached on the range of license
16 fees -- that is, the \$4- to \$7 million for public
17 television and the \$1- to \$2 million for public radio
18 -- those represent your appropriate approximation of
19 subsidy-free royalty rates or license fees?

20 A Yes. That's my best estimate of subsidy
21 fee -- subsidy-free royalty rates for public
22 broadcasting.

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1 MR. KLEINBERG: I have no further
2 questions for the witness --

3 CHAIRPERSON GRIFFITH: All right.

4 MR. KLEINBERG: -- at this time.

5 CHAIRPERSON GRIFFITH: Mr. Schaeffer, do
6 you wish to cross examine, sir?

7 MR. SCHAEFFER: I have no cross
8 examination.

9 CHAIRPERSON GRIFFITH: All right.

10 Mr. Rich?

11 MR. RICH: Thank you.

12 CROSS EXAMINATION

13 BY MR. RICH:

14 Q Good morning, Dr. Owen.

15 A Good morning.

16 MR. KLEINBERG: I don't know if we should
17 go off the confidential or not now, Bruce.

18 MR. RICH: Well, we'll be moving different
19 places at different times. I suppose for the moment
20 we could invite everybody back in to the proceeding.

21 MR. SCHAEFFER: I'll see if they are out
22 -- they may not be outside.

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1 CHAIRPERSON GRIFFITH: The record will
2 reflect that we are now back in open session.

3 (Whereupon, the proceedings went back into
4 Open Session.)
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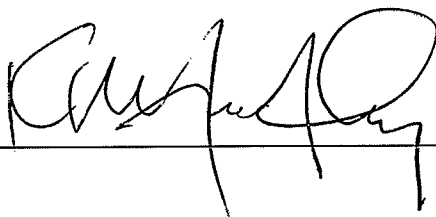
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Before: Library of Congress
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Date: March 17, 1998

Place: Washington, DC

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
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A handwritten signature in dark ink, appearing to be "K. M. [unclear]", is written over a horizontal line.